

REMARKS

This Amendment is in response to the Office Action of August 11, 2008 and the Notice of Appeal of December 11, 2008. Claims 1, 3, 9, 15-18, 21, 24-27, 30 and 34-40 have been amended. Claim 42 has been canceled. Thus, claims 1-43, 45 and 46 are pending. Reconsideration of the above-identified application, in view of the above amendments and the following remarks, is respectfully requested.

Claims 15-17 and 34-36 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claims 15-17 and 34-36 stand rejected under 35 U.S.C. 112, second paragraph, being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner objects to Applicant's use "means for being ... powered" as being subject matter that was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention.

Applicant's respectfully disagree for reasons previously presented. However, to expedite prosecution on the merits Applicant's have removed the means plus function language from these claims thereby rendering this rejection moot.

Claims 1-24, 38-44 and 46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 65856777 to Cowan, Jr. et al in view of US 6248080 to Miesel et al.

Each of the independent claims have been amended to positively recite that either the first and second pressure sensors, the differential pressure sensor and/or the CPU is non-invasively wirelessly powered. These independent claims no longer recited means plus function language. Support for this amendment can be found, for example, in the specification page 6, lines 15-30, where Applicant's state that "[t]he CPU and sensors are preferably non-invasively powered by the external device using RF telemetry. However, the CPU and sensors may be non-invasively powered using optical or acoustic methods."

In rejecting the claims on this point, the Examiner states that “Cowan discloses that his apparatus comprises a transmitter 64 for communicating with an external receiver, which the Examiner considers to be a functional equivalent to applicant’s antenna.” By this statement the Examiner clearly admits that Cowan fails to teach that Cowen’s sensors or microprocessor 52 are non-invasively wirelessly powered. As such, the present invention, as amended, is allowable and an early indication of such is respectfully requested. Applicant’s maintain that Meisel fails to teach or suggest the deficiencies noted in Cowan above. Thus, claims 1-24, 38-44 and 46 are not suggested by the combination of Cowan and Meisel.

Claims 25-30 and 34-37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 6585677 to Cowan, Jr. et al in view of US 4206762 to Cosman.

The Examiner admits that Cowan fails to disclose the pressure sensor 52 comprises a differential pressure sensor. The Examiner is relying on Cosman for the teaching of an implantable differential pressure sensor. The Examiner concludes that one of ordinary skill in the art would have found it obvious to substitute Cosman’s differential pressure sensor for Cowan’s pressure sensor. However, Cosman fails to teach or suggest the deficiencies noted in Cowan above.

Thus, claims 25-30 and 34-37 are not suggested by the combination of Cowan and Cosman.

Claims 31-33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 6585677 to Cowan, Jr. et al in view of US 4206762 to Cosman, further in view of US6248080 to Miesel.

The remaining rejections of the pending dependent claims, including claims 31-33, should become moot in view of the fact that independent claims are allowable. Thus, a Notice of Allowance in response to this Amendment is respectfully requested.

Please provide any extensions of time, which may be necessary and charge any fees, with the exception of issue fees, which may be due to Deposit Account No. 10-0750.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,
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